IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3489 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANCHVATI AUTO CENTRE & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SV RAJU with Mr R.J. Goswami for Applicant(s) : 1 - 2.
Mr SS Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 06/03/2007

ORAL JUDGMENT

1. Invoking the provisions of section 482 of the Code of Criminal Procedure, 1973 ("Code" for short), the petitioners have, *prima facie,* sought

quashing of Special Case No.22/96 pending before the learned Special Judge, Ahmedabad, but, in effect, challenged the order dated 25.4.1997 of the learned Special Judge below their application Exh. 5 for dropping the proceedings at the threshold.

2. The facts, as far as they are relevant, are that the petitioners were running a petrol pump which was inspected on 02.8.1995 in the evening by the complainant as an officer of Civil Supplies Department and, after finding the records and other requirements under The Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990 in order, samples of petrol were taken from each of the two tanks at the petitioners' premises. The samples were analysed on the spot for the purpose of verifying density and the samples were found in order with variation in the density within the prescribed limit of 0.0030. However, samples were drawn from the tanks and sent to Forensic Science Laboratory where sample from one of the tanks was found to have variation in the density to the extent of 0.0035. Only on the basis of

such variation in the density beyond the permissible limit, the complaint in question was filed on 4.3.1996 in the Special Court under the Essential Commodities Act, 1955 and offences punishable under sections 3 and 7 were alleged. The complaint came to be registered as Special Criminal Case No.22/96 and upon the petitioners, accused persons, submitting the application Exh. 5, the impugned order was made rejecting it on the ground, *inter-alia,* that, in light of the test report of the FSL, there was some basis for proceeding with the case.

3. Learned Senior Counsel Mr S.V. Raju submitted that the Government of India, in its Ministry of Petroleum and Chemicals, had issued The Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) **Order**, 1990, in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 wherein "adulteration was defined to mean introduction of any foreign substance into motor spirit/high speed diesel illegally/unauthorisedly with the result that the product does not conform to the requirements

indicated in Schedule I. Schedule I prescribed that the density at 15 degree celsius of motor spirit or high speed diesel at the receiving end (received by dealer) shall be within +/-0.0030 of the density at 15 degree celsius at the despatch depot of the Oil Company as indicated in the delivery document. It further stipulated in clause (2) of Schedule I that the density at 15 degree celsius in the dealer's tank, Retail Outlet pumps/retail point receptacle or any other point in Retail Outlet premises from where concerned sample was taken and tested should be within +/- 0.0030 of the recorded density after the last receipt at the retail outlet and/or the density taken in the morning following the last receipt. It was submitted that, not only that no introduction of any foreign substance was indicated even by the FSL report but the recorded density of last receipt at the Retail Outlet was not verified or mentioned in the complaint.

4. It was secondly argued by Mr Raju that the Government of India, in its Ministry of Petroleum and Natural Gas, had, by circular dated 12.9.1994

addressed to all the Secretaries of Department of Food and Civil Supplies of the Government of all States, directed that samples should not be drawn and sent to the Laboratory, if density were found to be in order at the examination on the spot at the time of inspection. The relevant part of the circular emphasised by the learned counsel may be reproduced hereunder:

> *".... It has been reported that samples are drawn and sent even when they conform to the specifications, which causes unnecessary harassment to the dealers.*
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> *2. .... The matter has been considered by the Ministry. It is emphasised and should be ensured that in the interest of natural justice, the inspecting officials will test the product for quality and density at the Retail Outlet itself in the presence of the dealer with necessary equipments such as filter paper, hydrometer, thermometer, jar and the conversion table which are all available at the Retail Outlets and record density at the R.O. by the given method and only if the density is not found in order, then only in such cases the samples would be drawn and sent to the laboratory for test*

purposes immediately and latest within 10 days of the order...."

5. It was submitted, on the above basis, that the complainant-inspector was under an obligation not to draw samples and send them for examination for analysis to the FSL after the samples being found to be in order in the on-the-spot test. He further submitted that inconsistency in the density, as found at the time of inspection and during the analysis by the FSL, would be reason enough to allow to the accused the benefit of doubt. And in any case, the variation was so miniscule and marginal that prosecuting the accused persons for adulteration on that basis would be an abuse of the process of court, since, even if the accused were to be convicted, no punishment would be justified for such marginal variation. He also submitted that not only that the Government had realised the likelihood of harassment but sought to prevent it by the aforesaid letter. Later on, in the new Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1998 replacing the earlier

order, the density test was altogether dispensed with.

6. Learned APP appearing for the respondent supported the impugned order and the reasoning adopted therein. He further submitted that the inspector-complainant was authorised and justified in drawing samples for proper analysis and detecting other irregularities, if any. He submitted that no *mala fide* could be attributed to the complainant insofar as he had inspected the retail outlet of the petitioner in discharge of his duty and, upon receipt of analysis report indicating variation beyond the permissible limit, filed appropriate complaint within time. He however, fairly conceded that, in view of the inconsistency found between the density found at the time of inspection and the density found in the analysis at the FSL and the miniscule and marginal variation of 0.0005 beyond the permissible limit, the chances of conviction or punishment of the petitioners were extremely remote and the trial may turn out to be purely an academic exercise.

7. In view of the above facts and circumstances, and since there was no controversy about the effect of the inconsistency between finding at on-the-spot inspection and the finding of the FSL and the variation beyond the permissible limit found in the analysis by the FSL being of negligible proportion which cannot sustain inference of addition of any foreign substance and the chances of conviction or punishment being extremely remote, further proceedings in the criminal trial are required to be cut short in the interest of justice. Therefore, the petition is **allowed** and the complaint registered as Special Case No. 22/96 and the proceedings thereof pending before the learned Special Judge, Ahmedabad, are quashed. Rule is made absolute with no order as to costs.

sd/-
[D. H. Waghela, J.]

msp